

OFFICE OF THE GENERAL COUNSEL
Division of Operations-Management

MEMORANDUM OM 05-40(Revised)

March 21, 2005

TO: All Regional Directors, Officers-in-Charge,
and Resident Officers

FROM: Richard A. Siegel, Associate General Counsel

SUBJECT: New "Full" Consent Election Agreement Procedure

On January 25, 2005 the Board published in the Federal Register final revisions to Parts 101 and 102 of its Rules and Regulations. These revisions include a new Section 102.62(c), which provides a third election agreement option for parties to a representation case. New Section 102.62(c) provides the parties with the opportunity to enter into a voluntary agreement to have the Regional Director conduct a hearing and thereafter resolve with finality all pre-election factual and legal disputes. The parties thereby waive their rights to file a request for review of the Regional Director's decision to the Board. The revised Rules are available on both the NLRB Internet Website and the Agency Intranet.

Under the new procedure, as with the traditional "consent" agreement under Section 102.62(a), all post election disputes – challenges and objections – would likewise be decided by the Regional Director with no right of appeal to the Board. The Regional Director would investigate those matters either administratively or through a hearing and issue a report setting forth his/her findings, which would be final and binding. The aim of the new subsection is to provide our customers with an option for a quick and fair election with prompt resolution of both pre- and post-election disputes through the expert and impartial application of representation law by means of binding decisions by a Regional Director.

The new "Full" Consent Election Agreement procedure offers these advantages to the parties:

- A quicker resolution of their representation dispute with finality.
- Access to a secret ballot Board election using tested election procedures without delays.
- Ability to litigate significant issues without delays.
- Substantial savings in legal expenses for all parties since there will be no proceedings before the Board.
- No uncertainties related to delayed business decisions, including desired changes in business operations, while awaiting the final disposition of the representation issue before the Board.
- Expertise in determining questions that arise when a representation dispute is present, e. g., unit placement, unit scope, eligibility of employees, etc.
- The benefits of Board Certification.

- Regional Director Decisions are reliable and are overturned by the Board on review in only a very small percentage of cases.

A new "Full Consent Agreement" form, Form NLRB-5509 (2-05), has been created to initiate the new election procedure under Section 102.62(c). A copy of the new form is attached and can be found also on the "forms" page of the Agency Intranet.

To inform representation case parties of the new procedure, a trifold has been prepared. Regional Directors should mail this trifold to labor organizations and attorneys who regularly practice before the Region to advise them of the availability of this new election procedure. A copy of this trifold, attached to the electronic version of this Memorandum in a "WORD" file, allows double-sided photo-copy reproduction.

If you have any questions concerning the matters addressed in this memorandum, please discuss them with your Assistant General Counsel or Deputy or with me.

/s/
R. A. S.

cc: NLRBU
Release to the Public

Attachments
Form NLRB-5509 (2-05)
Full Consent Election Agreement Trifold

MEMORANDUM OM 05-40(REVISED)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
FULL CONSENT ELECTION AGREEMENT

Pursuant to Section 102.62(c) of the Board's Rules and Regulations, the parties agree that any contested issues arising from the question concerning representation presented in the below referenced case will be resolved by the Regional Director after hearing, and further **AGREE AS FOLLOWS:**

1. HEARING. A hearing will be conducted in accordance with sections 102.63, 102.64, 102.65, 102.66, and 102.67 of the Board's Rules and Regulations.

2. DECISION AND ORDER OR DIRECTION OF ELECTION. The Regional Director will issue a decision upon conclusion of the hearing. The decision of the Regional Director will be final, with the same force and effect in that case as if issued by the Board.

3. ELECTION. Any election ordered by the Regional Director will be conducted under the direction and supervision of the Regional Director. The method of conducting any election ordered by the Regional Director will be consistent with the method followed by the Regional Director in conducting elections pursuant to sections 102.69 and 102.70 of the Board's Rules and Regulations.

4. OBJECTIONS, CHALLENGES, REPORTS. Objections to the conduct of the election or conduct affecting the results of the election, or to a determination of representation based on the results of the election, may be filed with the Regional Director within 7 days after the tally of ballots has been prepared and made available to the parties. The Regional Director will cause a copy of the objections to be served on each of the other parties. If objections are sustained, the Regional Director may include in the report an order voiding the results of the election and in that event, will be empowered to conduct a new election under the terms of this Agreement at a date, time and place to be determined by the Regional Director. If the challenges are determinative of the results of the election, the Regional Director will investigate the challenges and issue a report. The method of investigation of objections and challenges, including the question whether a hearing should be held, will be determined by the Regional Director, whose decision will be final.

5. CERTIFICATION. The Regional Director will issue to the parties a certification of the results of the election, including a certification of representative where appropriate, with the same force and effect in this case as if issued by the Board.

6. FINALITY OF REGIONAL DIRECTOR'S DECISION. All rulings and determinations made by the Regional Director will be final, with the same force and effect in that case as if issued by the Board.

FORM NLRB-5509
(2-05)

(Employer)

By _____
(Name) (Date)

(Title)

Recommended:

(Board Agent) (Date)

Date Approved: _____

Regional Director
National Labor Relations Board

Case: _____

(Labor Organization)

By _____
(Name) (Date)

(Title)